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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,793	07/08/2002	David Paul Jankowski	CASM118912	1083

26389 7590 11/02/2004

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EXAMINER

ZIMMERMAN, BRIAN A

ART UNIT

PAPER NUMBER

2635

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,793

Applicant(s)

JANKOWSKI ET AL.

Examiner

Brian A Zimmerman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 and 18-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

EXAMINER'S RESPONSE

Status of Application

In response to the applicant's amendment received on 8/12/04. The examiner has considered the new presentation of claims and applicant arguments in view of the disclosure and the present state of the prior art. And it is the examiner's position that claims 1-16,18-29 are unpatentable for the reasons set forth in this office action:

Informalities

The amendments to the claims for the response dated 8/12/04 do not comply with 37 CFR 1.121. The status identifiers do not match the claims. The status identifiers for claims 3-16 should include the identifier "Currently Amended" as set forth by the rule.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 6 recites the limitation "the predetermined event". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-3,7-12,18,20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pogue (5144667) and Andreou (5712626).

Pogue shows a security system where the base unit (transponder means) transmits a trigger signal R,Q, and a portable device (remote unit) that receives and responds to the trigger signal. The trigger signal includes a random number that the remote unit uses in an algorithm with the ID of the remote unit, to generate a response signal. See figure 4. The response signal is compared with an expected value and if a match is determined, the door is opened. Pogue also shows the signal used to in a standard ignition to initiate vehicle starting procedures, col. 1 lines 20+. The response signal does not expressly change to a different frequency based on the output of the algorithm. In an analogous art, Andreou shows a security system that uses a random number as an input to an algorithm to change the frequency of the reply or access signal. The frequency can vary within a range as defined by the algorithm. See col. 13 lines 30-55. This changing of frequency improves security since it makes the transmission look more like noise and is more difficult to eavesdrop. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have changed the frequency of the response signal in Pogue as a function of the frequency in order to improve security as suggested by Andreou. The examiner

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takes official notice that the use of the ISM band of frequencies for such short range communication is standard practice since there are fewer FCC licensing issues involved to communicate in this range.

3. Claims 4 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pogue and Andreou as applied to claim 1 above, and further in view of Anderson (4868915).

In an analogous art, Anderson shows a proximity sensor that actuates the transponder. See col. 3 lines 34+. This saves power in that the transponder does not need to be unnecessarily active when not in use. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a proximity sensor in the above system as suggested by Anderson to reduce power consumption and extend the life for the transponder.

4. Claims 5,6,13-16,19,26-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pogue and Andreou as applied to claims 1,18,20 above, and further in view of Weishaupt (4738334).

In an analogous art, Weishaupt shows a system where the transponder is actuated by a switch when the vehicle door lock is actuated by moving the handle. This saves power in that the transponder does not need to be unnecessarily active when not in use. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a handle

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switch in the above system as suggested by Weishaupt to reduce power consumption and extend the life for the transponder.

Response to Arguments

Applicant's arguments filed 8/12/04 have been fully considered but they are not persuasive.

The applicant argues that combining Andreou and Pogue would render Pogue inoperable. The reasoning the applicant gives is that by adding Andreou's multiple frequency receiver, one would have to remove the single frequency receiver of Pogue and that would make Pogue inoperable. The applicant completely misinterprets the teachings offered by the prior art references. Pogue teaches a security technique where a random number is exchanged to be used in a common algorithm to ensure secure channel communication. Andreou teaches another additional security technique where a security algorithm that uses a recently exchanged random number will vary the communication frequency to improve channel security. These are not mutually exclusive concepts. Both can be used together to 'doubly' increase security. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

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The applicant argues that reliance on changing the frequency of the response signal in Pogue is unnecessary. The applicant is arguing that since the reference works by itself, no one would seek to improve it. It is very well held that this line of reasoning is flawed. The applicant provides the unsupported argument yet fails to support the argument with any reasoning. The very nature of a 35 USC 103 rejection is evidence that improving already working systems is desirable. Here, as pointed out above, adding additional security techniques vastly improves the channel security.

The applicant argues that the system of Andreou is inoperative. This argument is meaningless in that the applicant acknowledges that the system will work while within range. Even if a system may have flaws, as long as it can operate under some conditions, it is operable.

The applicant argues that there is no suggestion of motivation to combine the references. This argument is also meaningless since the applicant has acknowledged the motivational reasoning given in the Office Action, on page 9-second paragraph of the applicants response (8/12/04) where the applicant repeats that the motivation is to improve security.

The last paragraph of page 10 of the response, the applicant argues that the references Pogue and Andreou rely on different systems for security. Yes, this is true Pogue and Andreou do rely on different systems for security. The applicant argues that substitution of the security system of Andreou in the Pogue system would alter the principle (sic) operation of Pogue. The applicant is misinterpreting the rejection. The rejection never states that this would be a

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substitution; rather the rejection is clear this is an additional security method to be added to the Pogue system. The applicant is incorrect; the applicant would thereby argue that the use of disc brakes in a vehicle that has an emergency brake would alter the principle of the braking systems.

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

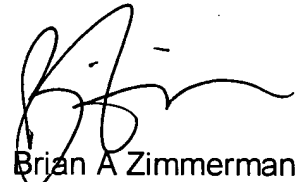
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian A Zimmerman whose telephone number is 571-272-3059. The examiner can normally be reached on Off every other Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Horabik can be reached on 571-272-3068. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Brian A Zimmerman
Primary Examiner
Art Unit 2635

BAZ

